



had been arrested at Limuru by **APC Patrick Ngunjiri** (PW4). PW3 travelled to Limuru in Kiambu District and was informed that the suspect had been handed over to CID Officers at Kikuyu Police Station. PW3 took custody of the suspect and brought him to Eldoret Police Station where the suspect was identified by PW2 as the appellant. **IP Josephat Mbingu Kisingu** (PW5) is the officer who mounted an identification parade on 15<sup>th</sup> February, 2008 at which the appellant was identified by PW2.

At the close of the prosecution case the Learned Principal Magistrate found that the appellant had a case to answer and put him on his defence. The trial was thereafter taken over by **A. Alego** Senior Resident Magistrate who duly complied with the provisions of section 200 of the Criminal Procedure Code.

The appellant gave an unsworn defence in which he denied the charge. He further denied knowledge of the complainant and PW2 and testified of his arrest and assault by police officers.

On 20<sup>th</sup> November, 2009 the Learned Senior Resident Magistrate delivered his judgment in which she convicted the appellant as charged and thereafter sentenced him to (5) five years imprisonment, after regarding the prosecutor's statement on sentence and the appellant's mitigation.

Being aggrieved by both his conviction and sentence, the appellant lodged his appeal before this court. When the appeal came up before me for hearing on 16<sup>th</sup> June, 2011, the appellant, who appeared in person, informed me that he did not wish to pursue his appeal against conviction and only urged the appeal against sentence. **Mr. Oluoch**, the Learned Senior Deputy Prosecution Counsel who appeared for the respondent, state, supported the sentence arguing that the term of five (5) years imposed upon the appellant was lawful and deserved, given that the motor vehicle was never recovered.

I have carefully perused the record, the grounds of appeal and the submissions made before me. At the outset, I must state that if the appellant had urged his appeal against conviction, I would have dismissed the same since I have found that he was convicted on sound evidence and that there was no possibility of mistaken identity. In my view the identification parade mounted by PW5 was unnecessary given that PW2 knew the appellant before the offence was committed.

With regard to sentence, the appellant has submitted that he is the sole breadwinner of his family which comprises his wife and four school- going children. The record shows that the appellant pleaded the same before the Learned Senior Resident Magistrate who considered the same and imposed the sentence of five 5 years. The maximum sentence for the offence the appellant was convicted of is seven (7) years imprisonment. The appellant was not given the said maximum sentence. Besides the motor vehicle stolen was never recovered. In these premises, I agree with the Learned Senior Deputy Prosecution Counsel that the sentence of five (5) years imprisonment was deserved.

In the end I uphold the conviction and confirm the sentence imposed upon the appellant. The appeal therefore fails in its entirety.

**DATED AND DELIVERED AT ELDORET  
THIS 3<sup>RD</sup> DAY OF NOVEMBER, 2011**

**F. AZANGALALA  
JUDGE**

**Read in the presence of: -  
The appellant and Mr. Chirchir H/B for Mr. Oluoch.**

**F. AZANGALALA  
JUDGE  
3<sup>RD</sup> NOVEMBER, 2011**